

Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p>Rampant Height and Setback Violations – Hundreds of houses (townhouse and multi-family units) have been built at heights far in excess of Planning Board-prescribed heights, and in breach of Planning Board-prescribed minimum setback requirements.</p>	<p>Note: The Site Plan Enforcement Agreement was prepared and submitted by Todd Brown, Linowes & Blocher, and signed by Joseph R. Davis and Michele Rosenfeld on behalf of M-NCPPC on May 12, 1999. Subdivision Plat Records (as currently on file with the County) for all homes within Phase I & II were platted against Site Plan Enforcement Agreement #8-98001. These records contain signatures of the M-NCPPC Chairman and the Developer on each. The Site Plan Enforcement Agreement, the Plat Records and Project and Preliminary Plans (which also contain the same height and setback standards) are public record, legally binding documents known to M-NCPPC Staff, Chairman, and Legal Counsel, as well as Developer and Developer Counsel, Todd Brown.</p> <p>Site Plan Enforcement Agreement (Attachment A): “Exhibit “C” – Certified Site Plan” The Certified Site Plan attached to the Site Plan Enforcement Agreement contains the approved data table with height restrictions of 35’ for single family, detached, townhomes and courtyard townhomes, and 45’ for multi-family units; and front yard minimum setbacks of 10’ for single family, detached, townhomes, courtyard townhomes and multi-family units. The Site Plan Enforcement Agreement confirms that what was approved and adopted by the Board at the time of the Site Plan hearing included specific height and setback restrictions.</p> <p>January 25, 2005 Letter from Wynn Witthans to Mr. William Roberts of Miller and Smith (Attachment B): This letter specifically amends the setback requirement for the Miller and Smith unit discussed. The letter states: <i>“Attached is the minor plan amendment to revise the front yard setback of Lot 15FF from 10 feet to 8 feet. This amendment is necessary to amend a 2-foot by 12.5 foot foundation layout field mistake.”</i> <i>“... The Planning Board previously waived the unit to street setbacks for the original approval (from 30 feet to 10 feet)...”</i></p>	<p>As to height restrictions, there are no height amendments on file with M-NCPPC that would legally alter what is present within the Site Plan data table. M-NCPPC Staff stated during the April 14, 2005 Hearing, “I made no amendments to height.” Neither the Developer nor the Developer’s counsel presented any valid height amendment information during the hearing. Neither the Developer nor the Developer’s counsel has presented to date any valid records that would dismiss the legally binding height restrictions present within the Site Plan Enforcement Agreement.</p> <p>As to setback restrictions, the presence of the specific setback amendment as issued by Staff, with language citing original Board adoption of specific setback restrictions indicates 1) that the Planning Board did indeed adopt a 10’ front yard setback (reduced from the original 30’) which Staff was still acknowledging as late as January, 2005, and 2) that an amendment would be necessary to change setbacks for any unit to allow reduction from the originally approved setback restrictions (as depicted on the Certified Site Plan data table).</p> <p>The Site Plan and Site Plan Enforcement Agreement, by way of incorporating the Certified Site Plan data table, legally obligate the Developer to adhere to the restrictions present within the data table. Why is there <i>any</i> question as to the governing restrictions for height or setback? These documents have always been available to Staff, and to the Developer and its counsel, and should have been used as the reference to provide answers to the questions posed by the CTCAC from August, 2004 through present. Minimally, they should have been referenced by Staff and Developer counsel at the April 14, 2005 hearing. Instead, for a period of over 10 months from the first inquiry by CTCAC to present, the CTCAC has been evaded, distracted and given the runaround while Staff and Developer representatives embark upon a plan to amend the legally binding requirements they recognize to be present in the approved Project Plan, Preliminary Plan, Site Plan, and Site Plan Enforcement Agreement. Despite attempts to present the records as “messy” or “ambiguous” the project requirements are clear to this day within those legally binding documents. It is essential for the integrity of the planning process that the Board ascertain all of the facts and impose appropriate penalties. Wrongful conduct must not be sanctioned through Board approval of amendments that simply paper-over blatant violations with disregard for the planning process.</p>

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<p>Removal of Essential Planned Features – Planned and approved features, such as “O” street (behind the Church) and the diagonal Pedestrian Mews (connecting the Church and historic district to the new Town Center) have been arbitrarily eliminated.</p>	<p>Site Plan Review #8-98001 – Staff Report from Wynn E. Witthans to the Montgomery County Planning Board, January 16, 1998 (Attachment C): <i>Page 10 – “Close to the edge of the Clarksburg Historic District, is a diagonal pedestrian mews. The mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. The sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. The mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development”</i> <i>Page 11 – “The extension of “O” street, perpendicular to Main Street, connects to the adjoining parcels to the south.”</i></p> <p>Site Plan #8-98001 – Montgomery County Planning Board Opinion, March 3, 1998 (Attachment D): <i>Page 5, Condition #20 – “Dedication and construction of “O” Street extended to occur prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i></p> <p>Site Plan Enforcement Agreement (Attachment A): <u>“Exhibit “B” – Development Program”</u> <i>B-6 (v) “Developer shall dedicate and construct “O” Street extended prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i> <u>“Exhibit “C” – Certified Site Plan”</u> The Certified Site Plan attached to the Site Plan Enforcement Agreement shows both “O” Street and the Pedestrian Mews. <u>“Exhibit “D” – Certified Landscape and Lighting Plan”</u> Sheet L-2 of 25, signed by S. Klebanoff on March 8, 1999 and approved and signed by Joseph R. Davis on May 13, 1999, depicts detail of both “O” Street and the Pedestrian Mews. The detail contained in the landscaping plan includes specific plantings along “O” Street and the Mews area, as well as indication of hardscape detail for the Mews.</p>	<p>One of the key goals of the Clarksburg Town Center Master Plan was the integration of historic Clarksburg with the new Clarksburg Town Center. Integral to this goal was the establishment of a visual and walkable vista connecting the Town Square area to the Church and historic district. Additionally, placement of the John Clark memorial within the Mews was a means of honoring the Clark family – essentially establishing a piece of historical Clarksburg within the extended Clarksburg (the new Town Center). “O” Street was intended to create a buffer between the new homes and the Church, while adding a connecting walk to link the Church with the Town Square.</p> <p>What has been done to the Community instead? The Developer has eliminated “O” Street, has constructed an asphalt road where the Pedestrian Mews was intended to be, and will be moving the John Clark memorial location to an area away from the Town Square. The Church spire is now barely visible from the Town Square area, the Mews is nothing more than a road flanked by townhouses, and the John Clark memorial will likely not be host to the pedestrian gathering that the Mews would have afforded it.</p> <p>Removal of these fundamental features constitutes a grievous loss to the Town Center and Clarksburg Community at large. The Certified Site Plan #8-98001 depicts “O” Street and the Pedestrian Mews. The Site Plan Enforcement Agreement (by way of inclusion of the Exhibits and by specific language as to the dedication of “O” street) legally binds the Developer to provide these features, yet the Developer removed them. How did this happen? Staff was questioned by CTCAC as early as September, 2004 on this issue and was not given a reasonable explanation. There was no public amendment hearing on the removal of these crucial features. There was no record found within Staff files to explain the Developer’s injudicious removal of these essential elements from the Town Center.</p> <p>The CTCAC would like an explanation as to the removal of these features. The Clarksburg Civic Association, members of the Church, and the members of the Clarksburg Community (those who spent nine plus years helping to shape the Master Plan) deserve an explanation. The entire CTC and greater Clarksburg Community expect the Planning Board to conduct a full hearing on July 7, 2005, with complete exploration of these issues, to enable discovery and to determine how it can ameliorate the situation.</p>

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<p>Amenity Phasing Violation – The Developer has failed to provide the amenities in accordance with the Phasing Plan contained in the Site Plan Enforcement Agreement. M-NCPPC has failed to enforce the Phasing Stipulations pursuant to the Site Plan Enforcement Agreement.</p>	<p>Site Plan Enforcement Agreement (Attachment A): “Exhibit “E” – Phasing Plan” <i>1. General: (b) “All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or by fifteen (15) years from the date of the Site Plan Approval (“Community-Wide Facilities Completion Date”). All remaining common areas must be conveyed to the Association on or before the Community-Wide Facilities Completion Date.”</i> <i>2. Stipulations: (b) “Developer must construct all recreational facilities and convey such facilities and common areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Developer must arrange for inspections by Staff to ensure that all facilities are timely, correctly and completely constructed.”</i> <i>(e) “Unless the Planning Board has agreed to modify the Phasing Schedule, the Developer’s failure to timely complete and turn over facilities and common areas shall operate to preclude Developer from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured.”</i></p>	<p>Contrary to Todd Brown’s letter of June 24, 2005 to Rose Krasnow, in which he references “%” of occupancy as relative to the completion of recreational facilities, it is the issuance of the 540th building permit (as noted within the Site Plan Enforcement Agreement #8-98001) that is the trigger date for conveyance of all amenities in Phase I to the HOA. Arguably, based on plat records tying all plats within the subdivision to Site Plan Enforcement Agreement #8-98001, it could be deemed the trigger date for conveyance of Phase II amenities as well. This Site Plan Enforcement Agreement does not reference “occupancy” or completion of phases as the trigger, it references “issuance” of permits. Although Mr. Brown fails to mention in his letter to Ms. Krasnow this Site Plan Enforcement Agreement Phasing Plan and Stipulations, that does not change the fact that his client, Newland, is legally bound by the terms of that Agreement.</p> <p>We are past the issuance of the 540th building permit for CTC and yet the pool has not opened, and many of the other community-wide facilities have not been completed. The Board has failed to act on its enforcement responsibility under the “Stipulations” of the Site Plan Enforcement Agreement. The CTCAC expects the Board to address this issue fully at the hearing, and to act immediately to stop the issuance of all permits until the “default is cured.”</p>
<p>Inconsistencies in MPDU Calculations – The Phasing Calculations received by CTCAC from M-NCPPC on June 10, 2005 do not reconcile with current units within CTC. It appears, based on plans submitted, that there will be a concentration of MPDU units within the Town Square area, virtually segregating MPDUs rather than integrating them equally throughout the Town Center.</p>	<p>MPDU Location Plan (Attachment E): The MPDU Location Plan signed March 27, 2003 by Terry Graves for the Developer and stamped by Richard Hawthorne on October 14, 2004, depicts an MPDU calculation based on 1300 total units. Additionally, the Plan shows “22+” MPDUs slated for the “Commercial/Residential” area, as well as “21+” and “21+” in Phase IA4 directly across from the “22+”</p>	<p>Based on calculations present within the MPDU Location Plan, and the assumption of approval of the planned 36-unit multifamily dwelling within the Town Square area (adjacent to Library), the resulting MPDU segregation/concentration would be in breach of Council and Board policy to have MPDUs dispersed among the market rate units.</p> <p>Additionally, the CTCAC notes that the Developer pre-supposes (as early as March, 2003) that an amendment to allow residential units within the commercial area will be granted. The CTCAC is initially alarmed by the potential for segregation of MPDUs, but has not researched the MPDU situation in depth due to lack of information available. We expect that the Board would “audit” the current phasing plan and units on site to provide an accurate report. We also expect that the Board would not approve supplemental residential units in the retail area.</p>

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<p>Fraudulent and Dubious Documentation and Practices – Multiple evidences have been unearthed by CTCAC that point to Staff malfeasance, with potential complicity, and beg further investigation.</p>	<p>1. <u>Altered Phase IB3 Site Plan and Actual Phase IB3 Site Plan (Attachments F1 & F2)</u> – Staff admitted (as reported by Charlie Loehr to the CTCAC) to having crossed out the heights on the data table “in the fall of 2004”. This took place <i>after</i> buildings were built and occupied, after the height issue was brought to Staff’s attention by the CTCAC in August, 2004, and prior to the April 14, 2005 hearing. “Clean” Phase IB3 Site Plan (attached) was recovered at DPS (within April, 2003 landscaping plans submission).</p> <p>2. <u>Phase II Site Plan:</u></p> <p>2a. Site Plan Review Phase II - #8-02014 – Staff Report from Wynn E. Witthans to the Montgomery County Planning Board, dated May 2, 2002 (Attachment G): Pages 10-G & 10-H – Includes a copy (reduced size) of Site Plans for 8-02014 which show the data table with height and setback restrictions as approved and adopted in the Phase I Certified Site Plan (containing the same height limits of 35’ and 45’ and front yard minimum setback of 10’).</p> <p>2b. DRC Transportation Planning Comments, dated November 19, 2001 (Attachment H) – The DRC notes file for 8-02014 also contains a reduced size Phase II Site Plan (signed April 26, 2001 by Tracy Graves, and April 27, 2001 by Ronald Collier, Professional Land Surveyor and Les Powell, CPJ) showing the same height and setback limits as the Phase I Certified Site Plan.</p> <p>2c. Site Plan Phase II (Attachments I, J, K & L) – The Site Plan was approved by the Board on May 9, 2002. It would be expected that the Signature Site Plan Set would have an approval date prior to or near May, 2002. However, the only Site Plan Phase II “signature set” (Attachment I) found on file with M-NCPPC is signed by the Developer on March 27, 2003, with an approval by Richard Hawthorne (stamp) on October 14, 2004. With this “signature set” the file contained a Site Plan Enforcement Agreement (Attachment J) and a Phase II Landscaping Plan (Attachment K) approval stamped by Richard Hawthorne on October 14, 2004. Minor Revisions to Site Plan Phase II, labeled “Pool and Plaza” (Attachment L, Pages L1-6) have conflicting signatures by Wynn Witthans, some dated November 12, 2002 and some dated November 12, 2003 within the same set.</p>	<p>1. CTCAC would like to know the motivation for Staff’s alteration of the Site Plan, and subsequent presentation of fraudulent documentation and false testimony to the Board at the April 14, 2005 hearing, to cover over the Developer’s violations. The CTC community and Montgomery County citizens at large expect a full exploration, examination and reporting of this matter at the July 7, 2005 hearing.</p> <p>2. The Board hearing on the Phase II Site Plan was held May 9, 2002 and the Board Opinion issued on June 17, 2002. Why is the <i>alleged</i> Site Plan Signature set on record with M-NCPPC, on which the Staff would have based its Staff Report and the Board issued its opinion, dated October 14, 2004 – two years and four months after the Board approval? This is incongruent and demands explanation. The information (copy of Site Plans within the Staff Report and DRC Review) retrieved by CTCAC contradicts the validity of an October 14, 2004 approval date. Also, CTCAC has confirmed that units contained within the Phase II Site Plan were, in actuality, permitted, built and occupied prior to the October 14, 2004 date. How could Counsel not have known this when submitting a “Site Plan Enforcement Agreement” against a signature set for buildings already occupied? Of note, this Site Plan is absent height restrictions and is therefore, under Zoning Ordinance 59-D-3.23, not a valid Site Plan. Additionally, there exists (Attachment L1-6) an amendment signed by Kimberly N. Ambrose on November 12, 2003. The set of documents, pages 1-6, are also signed by Wynn Witthans, with some dated November 12, 2002 and some dated November 12, 2003. (Was Staff in a hurry when signing these?) Either date (i.e. November 2002 or 2003), whichever of the two one contends is the actual date, does not align with the Phase II Site Plan “Signature Set” approval date of October 14, 2004. How can the Board Staff approve an “amendment” pre-dating the approval of the “signature set” Site Plan? Having not been able to find what the CTCAC believes must exist in terms of a Signature Site Plan reasonably concurrent in date with the actual Board approval for Phase II, and suspecting cover-up activity much like that admitted by Staff pertaining to the Phase IB3 Site Plan, the CTCAC expects the Board to conduct a thorough examination of Staff during the hearing to allow for discovery, reconciliation of information and reporting on the matter.</p>

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Fraudulent and Dubious Documentation and Practices (continued)	<p>3. Emails between Todd Brown and Wynn Witthans on March 25, 2005 and April 12, 2005 (Attachment M) – From Todd to Wynn: <i>March 25 - "...per our discussion, we intend to file the following with the Project Plan Amendment application."</i> <i>April 12 (Regarding: Project Plan Amendment Filing Fees) – "Wynn, unit count in retail area is 120 units..."</i> From Wynn to Todd: <i>March 25 - "The list looks good – we will have to go to DRC so the number of sets must conform to that type of distribution for all but the application statement in book form..."</i></p> <p>4. Site Plan Phase IB Part 2 - Minor Revision (Attachments N1 and N2) – CTCAC retrieved a copy of Phase IB Part 2 Site Plan (Attachment M1) from Staff files some time prior to August 26, 2004. CTCAC subsequently received a copy of the "same" Phase IB Part 2 Site Plan (Attachment M2) from Staff files the week following the April 14, 2005 Height Threshold Hearing (reference CTCAC history document for significance of chronology). These two documents, although duplicates, both signed by Tracy Graves (Developer), Ronald Collier (Surveyor), and Les Powell (CPJ) on June 28, 2001 and approved/signed by Wynn Witthans on August 3, 2001, have differing height information and differing Amendment numbers (handwritten variations – i.e. manually overwritten.)</p> <p>5. Signatory Issues – Multiple Questionable Signatures Tracy Graves signature on multiple documents including Phase II "Site Plan Signature Set" (Attachment I) appear to be copies of the same signature block with dates only changed, while her signature on Phase II Landscaping Plan (Attachment K) appears to be completely original.</p> <p>6. Overall interaction with CTCAC by Board Staff – It is evident that dealings with the CTCAC by Board Staff have been evasive and deliberately misleading (reference CTCAC History Document).</p>	<p>3. The Committee was outraged to learn that while the Developer, the Developer's Counsel, and Board Staff sat through the April 14, 2005 hearing, they were all well aware that behind the scenes they had already begun processing an amendment request to the very "development standards" they claimed allowed them to build with "4 stories" as the only limitation. At best, the citizens find this deceptive. The Board should be equally outraged, if it was not already aware of this intent by the Developer. The CTCAC demands full exploration and disclosure by the Board on this issue, with consideration of intent by Developer when determining appropriate remedial actions.</p> <p>4. The CTCAC has in its file a "clean" Site Plan, labeled "Minor Revision 8-98001B", of which the Staff was apparently unaware when changes were made to the Staff's copy. On the copy found in the Staff files, Staff has manually altered the "Minor Revision" to read 8-98001"A" by overwriting the "B" in pen, and the height data table by overwriting the heights with the words "4 stories." Existence of the "clean" Plan proves changes were made (as with the Phase IB3 Site Plan) after the fact and not as valid amendments. Both Staff and Developer representatives began collusively using a "4 stories" terminology in discussions and meetings (reference CTCAC History Document) with the CTCAC in October, 2004. It is alarming to note that discrepancies and questionable actions align with a "Fall 2004" timeframe. The CTCAC demands questioning of Staff, examination of documents, and Board finding on these issues at the July 7, 2005 hearing. Anything less will appear as a cover-up attempt.</p> <p>5. What is the legality of a signature copy versus an actual signature by the Developer representative? When did Tracy Graves cease being the signatory for the Developer (in view of Newland Acquisition)? Is Tracy still with Newland? If so, what is her authority? All questions to which CTCAC would like answers at the July 7, 2005 hearing.</p> <p>6. Evasions by the Board Staff, and the Board's apparent unwillingness to comprehensively address all issues pertaining to CTC Development, lead CTCAC and the community to believe that the Developer's interests are of much more concern to the Board than those of the tax-paying citizens. CTCAC would like to see these practices and the specific processes within M-NCPPC changed to reflect concern for and representation of the community at large.</p>